IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2224 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MJ BRAHMBHATT

Versus

DISTRICT DEVELOPMENT OFFICER

Appearance:

MR PH PATHAK for Petitioner

MR NV ANJARIA for Respondent No. 1, 2

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 24/11/2000

ORAL JUDGEMENT

Mr.P.H.Pathak, learned advocate for the petitioner and Mr.N.V.Anjaria, learned advocate appearing on behalf of the respondents.

#. RULE. Mr.N.V.Anjaria, learned advocate for the

respondents waives service of rule on behalf of the respondents. With consent of both the learned advocates for the parties, the present petition is heard finally today.

#. The brief facts of the present petition are as under :-

The petitioner was employed by the respondent Panchayat as clerk on daily rated basis in the year 1988. On 24th May, 1990, the petitioner holding qualification of SSC and entitled to get the benefits of higher pay scale as per the Government Resolution and settlement. The post of driver available vacant due to transfer of one regular driver Mr.I.S.Desai and therefore, the petitioner was directed to work as a driver. The respondent No.2 issued order on 12th February, 1997 extending the benefits of resolution dated 17th October, 1988 placing the applicant in the scale of Rs.750-940. The petitioner is skilled employee is entitled to get the benefits of resolution applicable to skilled employees and not applicable to the unskilled employees. The petitioner made representation on 28th July, 1997 to the respondents requesting that he being skilled employee and therefore he may be granted the benefits as per the resolution dated 17th October, 1988 as applicable to the skilled employees. The petitioner also pointed out that the petitioner having passed SSC Examination and has completed 7 years services therefore, as per the Government resolution dated 30th October, 1991, he is required to be extended the benefits of time scale of Rs.950 -1500 and even according to the petitioner, the petitioner has not been extended the benefits of TA and DA as well as overtime by the respondents. The petitioner has approached this Court by filing Special Civil Application No. 9381 of 1997 and on that occasion, this court has directed the respondents to consider the case of the petitioner for granting him benefits of higher pay scale on the ground that he is discharging duties of Class-III employee and also in view of the Resolution of the Government. The respondents have vide letter dated 24th January, 2000 rejected the request of the petitioner saying that the petitioner has not completed 7 years of services in 1988 and therefore, according to the clarification made by the Government that benefits are to be granted to the employees as and when they complete requisite number of years as it is a policy decision of the Government in favour of daily rated employees. According to the petitioner, the respondents have ignored the clarification made by the

Government and also not considered the case on the ground that the petitioner was discharging the duties of Class-III employee. Mr.Pathak, learned advocate has relied upon a decision of the Apex Court reported in 1998 2nd LLJ pg 1191. The prayer in this petition made by the petitioner is to set aside the order of rejecting the claim of the petitioner and to grant him higher pay scale as per the Government Resolution and not considering the case of the petitioner for payment of salary of skilled category of employees and also prayed that the petitioner who has completed 7 years of service as daily rated and since he has passed SSC examination, is entitled to benefit of higher scale and such benefit must be given by the respondents with interest and to direct the respondents to pay all arrears accordingly.

#. On behalf of the respondents, affidavit-in-reply has been filed and against that rejoinder has also been filed by the petitioner.

#. I have heard Mr.P.H.Pathak, learned advocate for the petitioner and Mr.N.V.Anjaria, learned advocate for the respondents. The dispute between the petitioner and respondents is that Circular dated 30th October, 1991, produced on record by the respondents at page-65 along with reply, wherein such benefit to scale of Rs.950-1500 has been extended by the Government to daily rated employes who have passed SSC examination and completed 7 years continues service. Accordingly, the daily rated employees having qualification as aforesaid is entitled to scale of Rs.950-1500. However, as against this, Mr.Anjaria has submitted that the Circular dated 30th October, 1991 provides that the daily wagers who have completed 7 years services on 1st May, 1991 are only entitled to scale of Rs.950-1500 and the respondents applying such policy, arrived at the conclusion that the petitioner who has not completed 7 years of continuous service on 1st May, 1991 and therefore the petitioner is not entitled. However, the fact remains in the present petition that earlier the present petitioner has approached this Court by way of Special Civil Application No.9381 of 1997 wherein, this Court [Coram : R. Balia, J.] has passed order on 14th October, 1999 taking into consideration almost all such contentions, ultimately directed the respondents to consider the case of the petitioner for extending such benefits of higher pay scale on completion of 5 years service as skilled workman in terms of Resolution dated 17th October, 1988 and / or on completion of 7 years service as daily rated workman since he was holding qualification of SSC Examination as per the Resolution dated 10th October, 1991 and if found

eligible to extension of such benefit to give such benefits with effect from the date on which he became entitled to it. In pursuance of the said direction which has been issued by this Court on 14th October, 1999, the Executive Engineer of the respondent Panchayat has considered the case of the petitioner and has passed order on 24th January, 2000 which is produced by the petitioner on record on page 35 of the petition. I have perused the said order passed by the Executive Engineer on 24th January, 2000. According to this order, two facts are undisputed between the parties, of which, one is that the petitioner was appointed as unskilled labourer daily wager with effect from 11th August, 1988 and with effect from 24th May, 1990 the respondents are taking work of skilled category from the petitioner. The number of working days from the years 1990 to 1997 has been taken in account the Executive Engineer. The Executive Engineer has rejected the case and the claim thereof made by the petitioner only on the ground that on 1st May, 1991, the petitioner has not completed 7 years service as an daily rated employee holding qualification of SSC Examination and therefore arrived at a conclusion that he is not entitled to the benefit of higher pay scale of Rs.950-1500. Prima facie, after perusing the orders dated 30th October, 1991, the interpretation of the Executive Engineer is incorrect and contrary to the scheme of said circular. In fact, circular provides benefit of higher pay scale to such daily wager who is working in skilled category holding qualification of SSC then, such employee is entitled to a benefit of scale of Rs.950-1500 irrespective of the fact whether he has completed 7 years services on or before 1st May, 1991 or not. The said interpretation construed by the Executive Engineer and even in reply, same contention has been emphasised by the respondents, therefore, after perusing the Circular dated 30th October, 1991 which is on page-65 cannot be accepted because of the reason that the benefit which has been granted in favour of the daily wagers holding SSC Examination qualification and having completed 7 years of service, in that case, he is entitled to the benefit of higher pay scale of Rs.950-1500/- irrespective of the fact that whether 7 years service has been completed on 1st May, 1991 or subsequent to this period. Therefore, the conclusion reached by the Executive Engineer vide his decision dated 24th January, 2000 in pursuance of the order passed by this Court in Special Civil Application NO. 9381 of 1997 dated 14th October, 1997, seems to have arrived at on incorrect and wrong interpretation of Circular dated 30th October, 1991. Even, as per the impugned order dated 24th January, 2000, undisputedly, the Executive Engineer

himself has mentioned that the petitioner is in service of skilled category with effect from 24th May, 1990, as a result, this Court is of the considered opinion that since the interpretation construed by the Executive Engineer is not correct, in fact, the petitioner is entitled to benefit of higher pay scale being daily wager employee working in the skilled category holding SSC qualification and having put in requisite service with effect from 24th May, 1990, is entitled to higher scale of Rs.950-1500/-. However, this aspect is again required to be examined by the respondents, no doubt interpretation which was relied upon by the respondent is not correct and therefore, now the respondent has to consider the case of the petitioner in light of the observations made by this Court that Government Circular dated 30th October, 1991 is not only applicable to the daily wagers holding qualification of SSC and having completed 7 years of services on or before 1st May, 1991 but this benefit is also available to such daily wagers who have passed SSC examination and completed 7 years service even after 1st May, 1991 and as and when any such daily wager having aforesaid qualification completes 7 years service from the date of joining of service, in that case, such daily wager is entitled to benefit of higher pay scale of Rs.950-1500/- as per the said Government Resolution dated 30th October, 1991. Therefore, considering all these aspects of the matter, it is directed to the respondents to consider the case of the petitioner in light of the interpretation made by this Court in regard to the Government Resolution dated 30th October, 1991 and the respondents are further directed to examine the case of the petitioner in light of the aforesaid observations made by this Court in regard to said Government Resolution dated 30th October, 1991 and shall pass appropriate order within two months from the date of receiving certified copy of this order and ultimately, if the respondent authority comes to the conclusion that the petitioner is entitled to benefit of higher pay scale as per the Government Resolution dated 30th October, 1991, then all consequential benefits shall have to be paid to the petitioner by the respondent authority within some reasonable period.

#. In view of aforesaid discussions and directions, the present petition stands disposed of accordingly. Rule is made absolute to the extent indicated hereinabove. No order as to costs.

Date : 24-11-2000 [H.K.Rathod, J.]

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